

### **REMARKS**

Claims 1, 4-9, and 29-35 were pending in the application. Also, claims 21-23 remain withdrawn but have not been canceled, as they appear to directly read on the invention of the originally elected claims 1-9. By this paper, claims 1, 4-7, 9, 29, 31, 34, and 35 have been amended.

Amendments to the claims have essentially been made to eliminate cumbersome and redundant language, as well as to add consistency to the language used within the claims. The backrest structure of claims 1 and 34 has also been amended to illuminate differences between the claimed child seat backrest and the seat structures of the cited references. Reconsideration and withdrawal of the obviousness rejection are hereby respectfully solicited in view of the foregoing amendments and the following remarks.

#### **Claim Rejections - 35 U.S.C. §103**

Pending claims 1, 4-9, and 29-35 have been rejected under 35 U.S.C. §103(a) as obvious over Verbeek, U.S. Patent No. 5,938,285 (Verbeek) in view of Warner, U.S. Patent No. 5,836,650 (Warner). Reconsideration and withdrawal of the obviousness rejection are solicited in view of the foregoing amendments and the following remarks.

#### **Cited References Fail to Teach All of the Claim Limitations**

First, claims 1 and 34 each recite a seat backrest with a back support surface and with top and bottom portions. Each of the top and bottom portions is recited as forming part of the back support surface of the backrest (see Figures 1-3 of the instant application). The top portion is said to be vertically adjustable relative to the bottom portion. In contrast, Warner does not teach or suggest a two-part backrest and, in fact, discloses virtually nothing about the backrest structure. Verbeek teaches an office chair with a one-piece backrest 32 that can be vertically adjusted on a metal post or J-bar 30 (see Figure 1 and col. 3, lines 39-54. The one-piece backrest 32 forms the entire back support surface of the Verbeek chair. The post 30 forms no part of the back support surface.

Any combination of Verbeek and Warner fails to teach or suggest all of the limitations of claims 1 and 34. Specifically, the cited reference combination does not teach a backrest with a top portion vertically adjustable relative to a bottom portion, wherein both portions form part of

the back support surface of the backrest. The combination of Warner and Verbeek does not render claims 1 and 34 and their corresponding dependent claims *prima facie* obvious for at least this reason. Based on this reason alone, the obviousness rejection should be withdrawn.

There is No Motivation or Suggestion to Combine Reference Teachings

Next, the Verbeek and Warner references fail in fact to provide any motivation or suggestion to combine their reference teachings in the manner put forth in the action. Combining their teachings as proposed would be redundant or would destroy the teachings of Verbeek. The Verbeek chair has an automatic release mechanism which allows vertical up and down adjustment of its one-piece back. Verbeek at col. 6, line 55 to col. 7, line 21 and at col. 7, lines 39-50, describes this “self-contained” release mechanism in substantial detail. Adding a release mechanism handle as taught by Warner would be completely redundant to the self-contained release mechanism in Verbeek, which purposely does not employ a handle. This redundancy entirely eliminates any motivation or suggestion to combine the Warner handle with the Verbeek chair. Alternatively, this redundancy necessitates substantially modifying or entirely eliminating the self-contained release mechanism taught by Verbeek, which would destroy those express reference teachings. Either way, there is no motivation or suggestion found in fact within the prior art to modify Verbeek according to Warner.

Additionally, Warner does not teach a release mechanism with a handle for adjusting the height of any part of a seat back or backrest. Instead, Warner teaches a release mechanism and handle for adjusting only the tilt angle or attitude of the seat. Modifying Verbeek to include the release mechanism and handle of Warner would not result in a height adjustable backrest operable via the Warner handle. Instead, the Verbeek office chair would have additional attitude or tilt angle adjustability.

Clearly, there is no motivation or suggestion found in fact within the prior art teachings to modify Verbeek according to Warner, much less one that would achieve a child seat with an adjustable backrest as claimed. Based on these reasons alone, the obviousness rejection should be withdrawn.

### Final Action Does Not Identify Motivation to Combine Within the Prior Art Teachings

Lastly, the final action fails to identify a proper motivation or suggestion to combine the teachings of Verbeek and Warner. The final action alleges that it would have been obvious to modify the office chair of Verbeek to incorporate a release mechanism with a handle as taught by Warner. Page 3 of the final action states only that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Verbeek “child seat” to include a release mechanism as taught by Warner *in order to adjust the child seat*. This purported motivation is not supported by the reference teachings (see above for further discussion) and the final action does not identify where in the prior art this “motivation” might be found.

A *prima facie* case of obviousness requires that the motivation or suggestion to combine reference teachings come from the prior art teachings, and not from the applicant’s invention via hindsight. Here, the final action does not identify where in the prior art teachings the motivation is found to modify the Verbeek chair by incorporating the release mechanism of Warner. Hindsight is the only other possible source of this motivation. Thus, a *prima facie* case of obviousness has not been established for at least this additional reason. Based on this reason alone, the obviousness rejection should be withdrawn.

### CONCLUSION

Claims 1, 4-9, and 29-35 are believed to be in condition for allowance in view of the foregoing amendments and remarks. Reconsideration and allowance of the claims are respectfully solicited. The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

A petition for a two-month extension of time and the appropriate fee accompany this paper, which is filed in response to the final action dated September 12, 2005. An RCE and fee also accompany this paper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bryan J. Lempia", is written over a horizontal line.

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